

# STATE OF LOUISIANA LEGISLATIVE AUDITOR

Tangipahoa Parish Clerk of Court  
Amite, Louisiana

February 27, 2008



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*Daniel G. Kyle, Ph.D., CPA, CFE*  
**Legislative Auditor**

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**LEGISLATIVE AUDITOR**

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**TANGIPAHOLA PARISH CLERK OF COURT**  
Amite, Louisiana

Dated January 25, 2002

Under the provisions of state law, this report is a public document. A copy of this report has been submitted to the Governor, to the Attorney General, and to other public officials as required by state law. A copy of this report has been made available for public inspection at the Baton Rouge and New Orleans offices of the Legislative Auditor and at the office of Tangipahola Parish Clerk of Court.

February 27, 2002

**TANGIPAHOLA PARISH CLERK OF COURT**  
Amite, Louisiana

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January 25, 2002

**HONORABLE JOHN J. DAHMER**  
**TANGIPAHOA PARISH CLERK OF COURT**  
 Amite, Louisiana

We have performed a limited examination of the Tangipahoa Parish Clerk of Court. Our examination was conducted in accordance with Title 24 of the Louisiana Revised Statutes and was performed to determine the propriety of certain allegations received by this office.

The accompanying report presents our findings and recommendations, as well as your response. We will continue to monitor the findings until you resolve them. Copies of this report have been delivered to the Tangipahoa Parish Council, Louisiana Clerks of Court Association, and other authorities as required by law.

Respectfully submitted,



Daniel C. Kyle, CPA, CFC  
 Legislative Auditor

ESB:GLM/OCA:ml

04/02

## LEGISLATIVE ASSISTANT

### TANGIPAHOA PARISH CLERK OF COURT Archie, Louisiana

#### BACKGROUND

As provided by Article V, Section 20 of the Louisiana Constitution of 1974, the clerk of court serves as the parish's ex-officio notary public; the recorder of conveyances, mortgages, and other acts; and has other duties and powers provided by law. The clerk of court is an independently elected official and is elected for a term of four years.

Clerk of Court John J. Bohner was first elected as clerk of court of Tangipahoa Parish in 1992, and is currently serving a four-year term that began July 1, 2000. The clerk of court operates three offices in Tangipahoa Parish (Archie, Hammond, and Kentwood) and has approximately forty employees.

Clerk of court employees participate in the Louisiana Clerks of Court Retirement System and the State of Louisiana Deferred Compensation Plan. Employees are required to contribute 5.5% of their salary to their retirement plan. The clerk of court has elected to pay the employees' required contributions that totaled \$93,891 and \$101,890, for years 2000 and 2001, respectively. Also, the clerk of court elected to make voluntary contributions to employees' deferred compensation plans that totaled \$184,360 and \$90,864, for years 2000 and 2001, respectively.

A summary of the clerk of court's operations for 2000 and 2001 follows:

	Fiscal Year Ending <u>June 30, 2000</u>	Fiscal Year Ending <u>June 30, 2001</u>
Total Revenues	\$2,795,947	\$3,410,488
Total Expenditures	<u>3,349,978</u>	<u>3,633,230</u>
(Deficiency) Excess of Revenues Over Expenditures	<u>(\$554,031)</u>	<u>\$777,258</u>

Louisiana Revised Statute (R.S.) 13:701 requires the clerk of court to collect all fees and charges due his office and deposit them in the clerk of court's salary fund. The clerk is required to keep an accurate set of books in connection with this salary fund showing all receipts and all expenditures.

**LEGISLATIVE AUDITOR**

**TANGIPAHOLA PARISH CLERK OF COURT**  
Aurite, Louisiana

**METHODOLOGY**

The Legislative Auditor received information about certain issues relating to salary fund expenditures. We visited the clerk of court's office to determine the accuracy of this information.

We conducted a limited review of the clerk of court's financial records. A limited review is substantially less in scope than an audit conducted in accordance with generally accepted auditing standards, the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, we do not express such an opinion.

Our procedures consisted of the following: (1) examining selected clerk of court records; (2) interviewing certain employees of the clerk of court's office; (3) reviewing applicable Louisiana laws and Attorney General opinions; and (4) making inquiries of other persons to the extent we considered necessary to achieve our purpose.

## LEGISLATIVE AUDITOR

### TANGIPAHOLA PARISH CLERK OF COURT Amite, Louisiana

#### CONCLUSIONS

The following summarizes the findings that resulted from this limited examination of the clerk of court. The Findings and Recommendations section of this report provides details for these findings. The clerk of court's response is included in Attachment I.

1. Clerk of Court John Dahmer paid bonuses to his employees in violation of Louisiana's constitution and state law. (See page 6.)
2. Clerk of Court Dahmer's total compensation exceeded the maximum compensation allowed under state law. (See page 7.)
3. Clerk of Court Dahmer does not have an adequate travel policy, travel expense reports are not always prepared, and documentation for travel and travel-related expenditures is missing. (See page 7.)
4. Clerk of Court Dahmer used public funds for unnecessary travel costs and for expenditures that do not appear to have a public purpose. In addition, he used the office vehicle for personal uses. (See page 9.)
5. The clerk of court received his monthly expense allowance as well as charged the clerk's General Fund for in-parish meals and other travel expenses. (See page 15.)
6. Clerk of Court Dahmer leased a vehicle in violation of state law. (See page 15.)
7. Clerk of Court Dahmer exceeded his authority by entering into an agreement with the Tangipahola Parish Assessor to establish a parish-wide mapping system. (See page 15.)
8. The clerk of court did not advertise for requests for proposals for telecommunication and data processing contracts. (See page 17.)
9. Internal control over disbursements is inadequate because there is not a proper checks and balances in place. (See page 17.)
10. Clerk of Court Dahmer does not have a formal policy for the use of cellular phones. (See page 18.)

## LEGISLATIVE ACTION

TANGIPAHOLA PARISH CLERK OF COURT  
Amite, Louisiana

## FINDINGS AND RECOMMENDATIONS

**Bonuses Should Not Be Paid**

Clerk of Court John Dahner paid bonuses to his employees in violation of Louisiana's constitution and state law. Article VII, Section 14 of the Louisiana Constitution of 1874 provides that the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation.

During the period from July 1, 1997, through December 28, 2001 (five years), Clerk of Court Dahner paid bonuses to his employees, totaling \$388,700, as follows:

<u>Date Paid</u>	<u>Number of Employees Paid</u>	<u>Range of Payments</u>	<u>Total Payments</u>
July 1, 1997	34	\$300	\$10,200
November 21, 1997	34	\$1,000	34,000
June 28, 1998	35	\$500	17,500
November 18, 1998	38	\$300 to \$2,000	88,800
July 7, 1999	37	\$1,000 to \$2,500	41,800
December 14, 1999	39	\$500 to \$1,000	68,000
May 20, 2000	42	\$500 to \$3,500	51,250
June 28, 2000	42	\$500 to \$3,500	51,250
November 14, 2000	42	\$500	21,000
December 28, 2000	1	\$2,000	2,000
November 30, 2001	40	\$100 to \$500	12,050
December 28, 2001	40	\$100 to \$500	12,050
<b>Total</b>			<b>\$388,700</b>

Clerk of Court Dahner informed us that these additional payments to his employees are "temporary pay raises" and are not bonuses. Also, the clerk of court did not change the employees' future salaries by these amounts. The courts of this state and the attorney general have consistently held that the payment of additional compensation must be in the form of a salary increase for future services to be rendered. We were unable to determine what the future services were or how they were valued. Therefore, payments for past performance constitute a salary bonus and are an illegal donation of public funds.

If the clerk of court wishes to reward his employees for their services he must grant them permanent salary increases or adopt a formal incentive program for compensating employees.

**TANGIPAHOLA PARISH CLERK OF COURT**

Briarfield, Louisiana

Findings and Recommendations (Continued)

**Clerk of Court's Compensation Exceeds  
Maximum Allowed by Law**

Clerk of Court Dahmer's total compensation exceeded the maximum compensation allowed under state law. R.S. 13:752 provides that the clerk of court's statutory maximum compensation is the combined total of the compensation allowed, in accordance with the population of Tangipahola Parish, and the 7% increase allowed when the clerk of court has completed certain educational and experience requirements. Also, Louisiana Attorney General Opinion Nos. 99-490 and 06-193 provide that employer matching contributions are additional compensation to a public official. Additional compensation that exceeds the maximum compensation allowed by law is considered a donation to the clerk of court and is therefore prohibited by Article VII, Section 14(A) of the Louisiana Constitution.

Beginning July 1, 1999, Clerk of Court Dahmer began paying his portion of retirement plan contributions (8.7% of his salary) and his deferred compensation plan (Internal Revenue Code Section 457 Plan) contributions from clerk of court funds. This additional compensation exceeded his maximum compensation by \$7,784, \$19,724, and \$17,719 for years 1999, 2000, and 2001, respectively. Although there is no prohibition of voluntary contributions by the clerk of court as employer to his retirement and deferred compensation plans, those contributions cannot be made when he is already receiving the maximum compensation allowed by law.

Clerk of Court Dahmer should repay the clerk of court's office for all compensation that was in excess of the statutory maximum. In the future, he should not exceed his statutory maximum compensation.

**Travel Policy and Accountability Needed**

Clerk of Court Dahmer does not have an adequate travel policy, travel expense reports are not always prepared, and documentation for travel and travel-related expenditures is missing. Good internal control requires that appropriate policies be in place and followed to ensure that proper documentation exists to support all transactions. In addition, R.S. 44:26 requires that public records be preserved and maintained for a period of at least three years from the date on which the public record was made.

The clerk of court's one-page "Business Travel Expenses" policy is not adequate to meet the needs of the clerk of court and his approximately 40 employees. The present policy is very general. For example, it does not include reimbursement rates for mileage, lodging, and meals and does not provide specific guidance as to what is allowable relating to travel for clerk of court business or conference and seminar travel.

Although the present policy provides that employees should submit completed travel expense reports with receipts for all individual expenses, this is not always done.

**TAMMIPAHOLA PARISH CLERK OF COURT**  
 Arnaud, Louisiana  
 Findings and Recommendations (Continued)

The clerk of court's office has three VISA credit cards that are used for travel costs. Clerk of Court Dahmer maintains one VISA card for his use and his chief deputy maintains the other two VISA cards for her and other employees to use. We selected certain travel reports for the fifteen-month period from May 28, 2000, through August 24, 2001, for a detailed review. The following details the results of that review and demonstrates the need for an expanded travel policy and the need for accurate and complete travel expense reports.

1. **Meals** - Clerk of Court Dahmer and his employees charged \$8,071 (\$5,065 and \$2,976, respectively) at various restaurants on the office VISA cards. Because the clerk of court's office paid the credit card bill, expense reports were not prepared or filed.

There were 67 restaurant charges totaling \$5,865 (\$406 per month average) charged by Clerk of Court Dahmer on the office's credit card. Receipts were not available for 20 (\$2,833) of the 67 restaurant charges. Most of the credit card receipts that were available (37) did not contain the Internal Revenue Service required documentation of the business purpose of the meals and the names of persons participating. In addition, most of the credit card receipts did not include the itemized list of food items ordered. Consequently, we were unable to determine the reasonableness of meal costs compared to federal or state guidelines.

The clerk of court's travel policy allows for reimbursement of meal costs that are no more than what would be eaten at the employee's own expense or at the federal tax per diem rate. However, there is no comparison performed of meal costs to the federal per diem rate nor is there a review performed of the reasonableness of meal costs charged. The following is an example of certain restaurant charges made by Clerk of Court Dahmer on the office's credit card where there was no itemized list of items purchased and/or documentation of persons participating.

Date	Charged To	Location	Amount
August 21, 2000	Gino's Restaurant	Baton Rouge, LA	\$348
August 22, 2000	Mamou's Restaurant	Baton Rouge, LA	\$320
August 23, 2000	Juban's Restaurant	Baton Rouge, LA	\$396
September 22, 2000	Topola	Hammond, LA	\$155
November 26, 2000	Ruth's Chris Steakhouse	Baton Rouge, LA	\$217
November 30, 2000	Topola	Hammond, LA	\$420
February 11, 2001	Bella Figura	Lafayette, LA	\$155
February 12, 2001	Pope Boy's Riverside	Lafayette, LA	\$165
February 13, 2001	LaFontaine Restaurant	Lafayette, LA	\$157
March 22, 2001	Jacmel Inn	Hammond, LA	\$440

2. **Lodging** - Clerk of Court Dahmer and his employees charged \$6,485 (\$2,855 and \$3,850, respectively) at various hotels on the office VISA cards. Because the clerk of court's office paid the credit card bill, expense reports were not prepared or filed.

**TANGIPAHOLA PARISH CLERK OF COURT**  
 Arville, Louisiana  
 Findings and Recommendations (Continued)

The travel policy allows reimbursement for lodging at standard accommodations in mid-priced hotels, motels, or similar lodgings. There is no documentation that a review is performed for compliance with this policy. However, without specific reimbursement rates for lodging, the reasonableness of lodging costs cannot be determined.

3. **Daily Per Diem** – In addition to providing the office credit card to clerk of court employees for meals and lodging, they are paid a daily per diem allowance of \$25 for in-state travel and \$35 for out-of-state travel. During the period, per diem allowances totaling \$1,480 were paid to employees. Although the travel policy does not provide for per diem payments, we were informed that per diem payments are paid to employees to cover incidental traveling costs. Employees are not required to account for these costs or return any excess amounts back to the clerk of court's office.
4. **Mileage** – Instead of filing an expense report for reimbursement of the business miles traveled in their personal vehicles, employees charged \$1,275 for gasoline on the office's Visa credit card. The travel policy provides that business miles are to be reimbursed at the federal standard mileage rate. Obtaining reimbursement in this manner would require an expense report to be prepared to document the destinations traveled and business miles driven.

Clerk of Court Dahmer charged \$3,450 for gasoline on the office's credit card. Receipts were not available for \$3,100 of these charges.

The clerk of court should adopt a more detailed travel policy using the State of Louisiana policies as a guide. In addition, the clerk of court should discontinue using credit cards and require all employees to file expense reports for reimbursement of all expenditures made for business purposes. The expense reports should include all appropriate documentation supporting the business nature of the expenditures, in particular, the business purpose for meals and the names of all individuals participating should be documented. Also, all business expenses claimed for reimbursement should be within the clerk of court's adopted travel policies.

**Unnecessary Travel Costs, Expenditures Lacking Public Purpose,  
 and Personal Use of Office Vehicles**

Clerk of Court Dahmer used public funds for unnecessary travel costs and for expenditures that do not appear to have a public purpose. In addition, he used the office vehicle for personal reasons. Article VII, Section 14 of the Louisiana Constitution of 1974 provides that the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation. R.S. 42:1481(A) provides, in part, that officials, whether elected or appointed, by the act of accepting such employment assume a personal obligation not to misappropriate, misapply, convert, misuse, or otherwise wrongfully take any funds, property, or other thing of

**TANGIPAHOLA PARISH CLERK OF COURT**

Archie, Louisiana

**Findings and Recommendations (Continued)**

value belonging to the public entity in which they are employed. In addition, the clerk of court has a fiduciary responsibility to use the most cost-effective way to reach his destination when traveling on office business and use the office vehicle only for reasonable and necessary travel for business of his office.

We selected two of Clerk of Court Dahmer's out-of-state trips and reviewed the available travel records for these two trips. The following details how Clerk of Court Dahmer used public funds for unnecessary travel costs and how he used the office vehicle for personal means.

**1. International Association of Clerks, Recorders, Election Officials and Treasurers  
Thirtieth Annual Conference and Trade Show**

Billings, Montana

June 16-20, 2001

- Clerk of Court Dahmer attended the conference for \$3,630 as follows:

Expenditure Type	Cost
Airline Ticket - Roundtrip	\$450
Vehicle Rental and Gasoline	1,200
Lodging:	
June 8, 2001 - Hilton Hotel, New Orleans, LA	167
June 9, 2001 - Courtyard Marriott, Spokane, WA	159
June 10, 2001 - Broken Spur Motel, Three Forks, MT	50
June 13-16, 2001 - Sheraton Billings Hotel, Billings, MT	795
July 1, 2001 - Hampton Inn, Spokane, WA	88
Meals (June 9 - July 2, 2001)	515
Conference Registration Fees	466
<b>Total</b>	<b>\$3,630</b>

- The two-day conference started on Saturday, June 16, 2001, in Billings, Montana; however, Clerk of Court Dahmer flew from New Orleans, Louisiana, to Spokane, Washington, on June 8, 2001, (seven days earlier than necessary), rented a Ford Explorer and drove over 500 miles to attend the conference in Billings, Montana. He left the conference after one day (on June 17, 2001), but he did not return home until July 2, 2001, two weeks later. The clerk of court informed us that his wife accompanied him on the trip and they took a vacation before and after the conference.
- Before taking the trip, Clerk of Court Dahmer did not document that his method of travel was the most cost-effective way to travel to the conference in Billings, Montana. We estimate that Mr. Dahmer was reimbursed for (1) additional meal costs totaling \$415; (2) additional lodging costs totaling \$835; (3) a rental vehicle totaling \$300; and (4) gasoline purchases totaling \$235, which would not have been necessary if he had

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Amite, Louisiana

Findings and Recommendations (Continued)

flown directly to Billings on Friday, June 15, 2001 (the day before the conference started), and returned directly home on Sunday, June 17, 2001 (the day he departed the conference).

- **Unnecessary Vehicle Rental and Gasoline Costs**

Although Clerk of Court Dahmer spent two days in Billings that were directly related to the conference (June 15-16, 2001), he was reimbursed for 15 days of vehicle rental costs totaling \$405 and gasoline purchases totaling \$235. Had he flown directly to Billings, Montana (rather than to Spokane, Washington) and taken a taxi or shuttle to the conference hotel, the \$1,200 paid for the rental vehicle and gasoline would not have been necessary.

Subsequent to our inquiry, Clerk of Court Dahmer repaid his office \$128, which he said was for the vehicle rental costs for his two-day drive (one-way) from Spokane to Billings on June 12-13, 2001.

- **Additional Lodging Costs Reimbursed**

Although Clerk of Court Dahmer spent two nights in Billings that were directly related to the conference, he was reimbursed for eight nights of lodging costs totaling \$1,212.

Clerk of Court Dahmer drove from Spokane and arrived in Billings on Wednesday, June 13, 2001, three days before the conference started. He departed on Sunday, June 17, 2001, one day after the conference began. Clerk of Court Dahmer informed us that he attended the conference to learn more about potential federal government rule changes to the election process. He said, "I got to Billings a few days early and had discussions with various people relating to this topic. At the last minute, the federal government backed off and there was no further discussion or reason for me to be at the conference any longer." Therefore, Clerk of Court Dahmer spent only two nights in Billings (Friday, June 15, 2001, and Saturday, June 16, 2001) that were directly related to the conference and should have only been reimbursed for those two nights of lodging costs totaling \$277, rather than \$1,212, a difference of \$935.

Subsequent to our inquiry, Clerk of Court Dahmer repaid his office \$144, which he said represented two nights of lodging before the conference start date (June 12-13, 2001).

- **Additional Meal Costs Reimbursed**

Although Clerk of Court Dahmer spent two nights in Billings that were directly related to the conference, he was reimbursed for 14 days of meal costs totaling \$875. Included in his reimbursement was \$80 for three days of meals (daily meal per diem for June 14, 15, and 17, 2001) for which he charged \$70 for meals on his office's credit card. Also, the clerk of court did not account for and subtract the costs of his wife's meals included on his expense reimbursement report. We could not determine the total costs of his wife's meals because many of the meal receipts (originals) were supported by credit card slips/tickets that did not contain the details of the meal purchase.

## LEGISLATIVE AGENCY

### TANGIPAHOLA PARISH CLERK OF COURT

Archie, Louisiana

Findings and Recommendations (Continued)

Clerk of Court Dahmer's meal costs for the three days that were directly related to the conference (Friday, June 15, 2001, through Sunday, June 17, 2001) totaled \$97. Therefore, Mr. Dahmer should have been reimbursed \$97, rather than \$810, a difference of \$410.

Subsequent to our inquiry, Clerk of Court Dahmer repaid his office \$107, which he said represented two days of actual meal costs incurred before the conference start date (June 13-15, 2001) and one day's meal per diem claimed subsequent to the conference (June 20, 2001).

#### 2. Observation of Voting Machines and Election Day Activities

Riverside County, California - Election Polls

Temecula, California

July 26, 2000

- Clerk of Court Dahmer traveled to California to observe electronic voting machines and election day activities at the polls in Riverside County (City of Temecula, California) for \$2,147 as follows:

Expenditure Type	Cost
Airfare Tickets - Roundtrip from Albuquerque, New Mexico, to Los Angeles, California	\$410
Vehicle Rental - Los Angeles, California	221
Lodging:	
July 21, 2000 - Comfort Inns, Dallas, TX	62
July 22, 2000 - Inpet Hotel, Albuquerque, NM	251
July 23-25, 2000 - Per Diem for 3 Nights in Temecula, CA	280
August 13, 2000 - Residence Inn, Austin, TX	137
August 14, 2000 - Comfort Inns, Clarksville, Arkansas	51
Meals	140
Meals - Per Diem for 3 Days in Temecula, CA	306
Gasoline	202
<b>Total</b>	<b>\$2,147</b>

- On Friday, July 21, 2000, Clerk of Court Dahmer and his wife left home for the trip to California. He drove the office's newly leased 2000 Chevrolet Tahoe to Albuquerque, New Mexico. On Sunday, July 23, 2000, they traveled by airplane from Albuquerque to Los Angeles, California, rented a vehicle, and stayed through Election Day on Tuesday, July 25, 2000. On Wednesday, July 26, 2000, Clerk of Court Dahmer and his wife flew back to Albuquerque, New Mexico, where his office car was parked. They returned home in the office car three weeks later on August 15, 2000, at the completion of their vacation.

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## Findings and Recommendations (Continued)

- On August 30, 2000, the clerk of court reimbursed his office \$47. The clerk of court determined the reimbursement amount by netting the difference between what he determined was owed his office for his "vacation mileage" and his wife's airline ticket (\$512) and the amount the clerk of court claimed was owed him for three nights lodging and meals while he was staying with relatives in California (\$465).
- Although Clerk of Court Dahmer claimed \$25 (per diem) for reimbursement of meals on July 26, 2000, he also charged \$72 for meals on his office's credit card.
- The clerk of court did not document the reasonable and necessary expenses that would have been incurred had he used an air carrier from Louisiana to California. Therefore, we cannot determine the amount of excessive public funds that were expended by Clerk of Court Dahmer.

Our review of certain travel records for the period from April 2000, through August 2001, revealed the following expenditures that appear to lack a public purpose:

- Conference Registration Fees Paid for Clerk of Court's Wife**  
Registration fees totaling \$275 were paid for Clerk of Court Dahmer's wife to attend two conferences. The clerk of court's wife accompanied him to the 2001 International Association of Clerks, Recorders, Election Officials and Treasurers Conference in Billings, Montana, in June 2001, and also to the 2000 Louisiana Clerks Association Convention held in Alexandria, Louisiana, in April 2000.

The clerk of court informed us that it is an accepted practice for his wife's registration fees to be paid from office funds. Subsequent to our inquiry, Clerk of Court Dahmer repaid his office the \$275 in conference registration fees paid on behalf of his wife.

- Expenditures Made While Traveling and Attending Conferences/Conventions**  
Clerk of court funds were expended for the following while the clerk of court was traveling and attending conferences/conventions.

Date	Location	Description of Expenditures	Amount
April 25-30, 2000	LA Clerks Association Convention	Movies	\$18
	Hotel Bentley Alexandria, LA	Liquor and Wine	\$30
February 6-7, 2001	LA Clerks Association Annual Legislative Meeting	Spa Facility Fees	\$30
	Beau Rivage Hotel and Casino Biloxi, MS	Movies	\$11
June 8-10, 2001	Courtyard Marriott Spokane, WA	Movies	\$18



**TANGIPAHOA PARISH CLERK OF COURT**  
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 Findings and Recommendations (Continued)

**Clerk of Court's In-Parish Expenses**

The clerk of court received his monthly expense allowance as well as charged the clerk's General Fund for in-parish meals and other travel expenses. By state law (R.S. 13:752H), the clerk of court receives a monthly expense allowance that averaged \$774 per month in 2001, and \$658 per month in 2000. This amounted to \$9,288 and \$8,290 for the 2001 and 2000 calendar years, respectively. At the same time, the clerk of court charged the General Fund for meals and other expenses for his in-parish travel (see finding "Travel Policy and Accountability Needed"). In our opinion, the monthly expense allowance is intended to fund these in-parish expenses.

We suggest that the clerk of court's business-related meal costs and travel costs incurred within the parish be absorbed by the clerk through his monthly expense allowance.

**Lease of Vehicle Violates State Law**

Clerk of Court Dahmer leased a vehicle in violation of state law. R.S. 13:753D(1)(a) provides that the clerk of court may purchase, out of any surplus in his salary fund, an automobile for the use of his office after having first obtained the consent of the Tangipahoa Parish Council. However, this law does not give the clerk of court statutory authority to lease a vehicle.

On June 23, 2000, the clerk of court entered into a two-year (single payment) lease agreement for a 2000 Chevrolet Tahoe, valued at \$40,514. Clerk of Court Dahmer made a one-time payment of \$27,600 (equal to \$1,150 a month for two years) on June 23, 2000, from his salary fund for this lease. He has an option to purchase the vehicle at the end of the lease term (June 23, 2002) for \$23,011.

In the future, the clerk of court should comply with state law and not lease a vehicle. If the clerk of court wishes to purchase a vehicle, he should obtain the consent of the Tangipahoa Parish Council.

**Agreement Exceeds Clerk of Court's Authority**

Clerk of Court Dahmer exceeded his authority by entering into an agreement with the Tangipahoa Parish Assessor to establish a parish-wide mapping system. Article VI, Section 14(C) provides that for a public purpose, the state and its political subdivisions or political corporations may engage in cooperative endeavors with each other, with the United States or its agencies, or with any public or private association, corporation, or individual.

## TANGIPAHOLA PARISH CLERK OF COURT

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Findings and Recommendations (Continued)

However, to have a valid cooperative endeavor agreement, all three of the following elements must be met:

1. The expenditure or transfer of public funds or property must be based on a legal obligation or duty.
2. The expenditure must be for a public purpose.
3. The expenditure must create a public benefit proportionate to its cost.

On December 25, 1994, Clerk of Court Gattner entered into a joint agreement with the Tangipahola Parish Assessor to establish a mapping department in the clerk of court's office. The clerk of court agreed to purchase a computerized system capable of producing ownership maps (including roads and rivers) in Tangipahola Parish that also offers geographic information system capabilities for use by other governmental entities. The agreement does not guarantee the completion of the mapping project and the funding by the clerk of court and assessor appears to be "at will."

NOVEMBER 21, 1994	
<b>INTER-GOVERNMENTAL AGREEMENT</b>	
In order to better serve the special needs of Tangipahola Parish and to promote efficient operations and resources for government entities in a more efficient manner, the Tangipahola Parish Assessor and the Tangipahola Parish Clerk of Court are forming a cooperative effort known as the Tangipahola Parish Assessor and the Tangipahola Parish Clerk of Court Mapping Department.	
The Assessor and the Clerk of Court will be assessed to each office at a level the Clerk of Court and the Assessor agree is appropriate to meet the benefits received by each office.	
A separate accounting system will be instituted which will include the cost of the mapping project to be \$270,048.	
 John J. Gattner Clerk of Court	 William Gattner Assessor
 Not signed	

The clerk of court's office has primarily funded the mapping project. From February 8, 1995, through June 28, 2001, the clerk of court has transferred \$470,000 of his office's funds to a separate account for this project. The assessor made a one-time contribution of \$90,000 to the mapping project on July 25, 1995 (556 years ago). As of September 10, 2001, \$370,048 has been expended on the project.

Although a parish-wide mapping system is beneficial to the public, the clerk of court does not have a legal obligation to provide for such a service to the parish. The clerk of court's primary responsibility is to serve as the parish's ex-officio rotary public (recorder of conveyances, mortgages, and other acts). Developing and integrating a mapping system into the clerk of court's office does not constitute an integral component of the clerk of court's official duties. Therefore, the first condition to qualify for a valid cooperative endeavor (legal obligation) is not met.

In addition to the clerk of court's lack of a legal obligation, the public benefit is not proportionate to the \$370,048 spent on the mapping project. During the period from February 8, 1995, through September 10, 2001, revenues totaled \$1,063, while expenditures totaled \$370,048.

## TANGIPAHOA PARISH CLERK OF COURT

Amite, Louisiana

Findings and Recommendations (Continued)

The clerk of court should:

1. Make every effort to bring this project to a completion, as it has been ongoing for over six years. The Tangipahoa Parish Council should be involved with this project, as it is responsible for defraying the clerk of court's capital outlay expenditures.
2. Not enter into a cooperative endeavor agreement, in the future, unless all three elements are met.

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### Contracts Not Advertised for Proposals

The clerk of court did not advertise for request for proposals for telecommunication and data processing contracts. R.S. 35:2237(A) allows the purchase of telecommunications or data processing systems, including equipment and related services, through a request for proposals process. The request for proposals process, a more flexible method of procurement compared to the traditional public bid process, requires advertising 30 days in advance of the proposal date.

Clerk of Court Dahmer informed us that he contacted various companies for quotes; however, he did not advertise for request for proposals for either of the following contracts that are key elements in the clerk of court's optical image retrieval (data transmission) system:

- On April 24, 2006, Clerk of Court Dahmer entered into a \$68,013 contract with a company to provide historical back file conversion services creating optical images for certain historic record files/documents stored and maintained on microfilm. The microfilm data is digitally imaged to CD-ROMM for use on the clerk of court's system.
- On June 29, 2006, Clerk of Court Dahmer entered into a \$95,000 contract with a company to primarily design, establish, and maintain the clerk of court's Web site interface with the optical image retrieval system that also provides for credit card transaction processing.

The clerk of court contends, and rightly so, that as a public official he does not meet the definition of a political subdivision as it relates to R.S. 35:2237(A) and therefore is not required to follow this law. However, the public is best served when competitive bidding practices are used for such contracts.

We suggest that, in the future, Clerk of Court Dahmer follow the competitive bidding requirements of the Louisiana public bid law.

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### Internal Control Over Disbursements Inadequate

Internal control over disbursements is inadequate because there is not a proper checks and balances in place. Good internal control requires that proper checks and balances be incorporated in the record keeping procedures.

**TANGIPAHDA PARISH CLERK OF COURT**

*Arbita, Louisiana*

**Findings and Recommendations (Continued)**

The clerk of court's chief deputy performs a variety of duties that are incompatible for a proper system of checks and balances. She is the sole employee involved in the following disbursement related functions/procedures:

- Processes, summarizes, and records accounts payable and payroll
- Approves invoices for payment
- Prepares, signs, and reissues/distributes checks
- Reconciles monthly bank statements
- Reconciles general ledger accounts
- Maintains general ledger and accounting/financial records

Clerk of Court Bahner should implement a proper system of checks and balances, to include separating the recording, approval and reconciling functions. In addition, we suggest that the clerk of court receive monthly all bank statements uncopied and perform a detailed review of all checks and deposits.

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**Policy for Use of Cellular Phones Needed**

Clerk of Court Bahner does not have a formal policy for the use of cellular phones. A formal policy would provide guidance for the business use and care of cellular phones.

During the two-year period from September 2000, to August 2001, clerk of court funds were used to pay for cellular telephone charges totaling \$1,968 (average of \$167 a month). The clerk of court's office has two cellular phones that are assigned to the clerk of court and his chief deputy. There is no evidence of review for propriety and reasonableness of phone usage.

Clerk of Court Bahner should adopt a formal policy for the business use of cellular phones and review the detailed monthly bill to ensure that the policy is being followed.

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## **Attachment I**

### **Clerk of Court's Response**



# Tangipahoa Parish Clerk of Court

JOHN J. BARTON, Clerk of Court

115 N. WILSON - GREEN, LA 70040-1150

February 18, 2002

ADMINISTRATIVE  
MAIL SERVICE

PHONE: (504) 734-1150  
FACSIMILE: (504) 734-1150  
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Dr. Daniel G. Kyle, CPA, CFE  
Legislative Auditor  
Post Office Box 94500  
1600 North Third Street  
Baton Rouge, Louisiana 70804-9450

Re: Response to Audit Report

Dear Dr. Kyle:

At the outset, I would like to thank you and your staff for the professional manner in which you conducted the audit of my office. I am always interested in learning how to better serve my constituents and appreciate any assistance you can offer in this regard. Having said that, I now would like to address the findings contained in your report.

### 1. Temporary Pay Raises

When I became Clerk of Court in 1992, I inherited an office facing serious financial difficulties. My employees and I worked hard to remedy the situation. After we secured our financial footing, I wanted to adjust my employees' salaries to make them commensurate with the services they were providing to the office. However, being mindful of the past, I was not going to raise salaries if it was going to jeopardize the office's financial stability.

I spoke both with my legal counsel and independent auditor and learned that payments of additional compensation lawfully could be made to my employees provided they were in the form of salary increases for future services to be rendered (i.e., "pay raises") and not extra compensation for past services already rendered and compensated (i.e., "bonuses"). Their advice was consistent with numerous opinions of the Louisiana Attorney General, including Opinion Nos. 95-145 and 95-165.

I then met with my staff and explained to them that I wanted to increase their salaries, but was concerned about doing so on a permanent basis. I then began budgeting the temporary pay raises at the beginning of each fiscal year. Since the pay raises were salary increases for future services to be rendered and not extra compensation for past services already rendered, I was under the impression they were not prohibited bonuses. In the event you strongly disagree with me on this point, please let me know and I will request an Attorney General's opinion to address this issue.

## **2. Annual Compensation**

R.S. 13:782(A)(1) establishes the annual compensation for clerks of district courts. However, it is my understanding that it must be read in conjunction with R.S. 13:782(A)(2) and R.S. 31:0562(C), both of which were passed by the Louisiana Legislature in 1999 (Acts 758 and 793 of 1999, respectively).

R.S. 13:782(A)(2) provides, in part, "[n]othing in this Section shall be construed to limit clerks from participation in an approved state deferred compensation plan. . . ." R.S. 31:0562(C) provides, in part, "[n]otwithstanding any other provision of law to the contrary, in lieu of deducting the employer contribution from the salary of each clerk, . . . each of the district courts . . . may elect to pay out of the clerk's . . . unexpended funds all or any portion of the employer contributions which would otherwise be deducted from the salary of each clerk. . . ."

In July 1999, after receiving notice of these legislative changes from the Louisiana Clerks of Court Association, I, as well as most of the other clerks of court, sheriffs and assessors, began making payments out of the general fund. It is my understanding that Acts 758 and 793 of 1999 were passed to cure problems such as those raised in Attorney General Opinion No. 98-490 (prosecutor who was receiving compensation at the maximum level was prohibited from making such payments). Attorney General Opinion No. 00-193 provides support for this interpretation. To further clarify this issue, it is my understanding that Mr. Joseph A. Diorio, Administrator for the Deferred Compensation Commission, just last week requested an opinion from the Attorney General that should resolve this issue once and for all.

## **3. Travel Policy**

I was under the impression that our travel policy was sufficient, however, in light of the concerns raised by you in this finding, my office will review its travel policy.

## **4. Travel Costs and Expenditures**

From April 29, 2000 through the present, I served as president and/or immediate past president of the Louisiana Clerks of Court Association (LCCA). As such, it was incumbent upon me to attend the annual national conference in Billings, Montana on behalf of the LCCA. The LCCA impressed upon me the importance of attending the conference because of the problems encountered with the last presidential election. A special federal task force was to present recommendations that would impact future elections. I also used the conference as an opportunity to meet with other officials from around the country to discuss our mutual problems. Unfortunately, the federal task force was unable to complete their recommendations in time for the conference. Even so, I had an excellent

opportunity to discuss common issues with other public officials and to view vendors' booths. I used this time out of state to make a vacation side trip, which I paid for personally.

The Tangipahoa Parish Registrar of Voters and I made the California trip to view the voting machines being considered for use in Tangipahoa Parish and elsewhere in Louisiana. Again, I used this time out of state to make a vacation side trip, which I again paid for personally.

In order to maintain the operations of my office, I often ask my employees to attend meetings outside of regular office hours. On these occasions, I cover the cost of employee meals as it has proven to be less costly than overtime.

#### **5. Clerk of Court's Expense Allowance**

R.S. 13:782(3) grants each individual clerk of the judicial district courts "ten percent of his annual compensation as an expense allowance." Although I am aware of no Attorney General opinion interpreting R.S. 13:782(1), significant insight into its meaning may be found in Louisiana Attorney General Opinion Nos. 80-1416, 90-584, and 91-13. Those opinions interpreted nearly identical language contained in R.S. 13:2153 and R.S. 13:1212.1.

R.S. 13:2153 provides, in part, that "the Clerk of the First City Court of the City of New Orleans shall receive a sum not to exceed 10% of his annual salary as an expense allowance." In Opinion No. 80-1416, the Attorney General opined that the Court should honor a warrant presented by the Clerk of Court without any supporting documents accounting for the disbursements. Simply put, the statute restricted the expense allowance to ten percent of the Clerk's salary, but did not require the Clerk to show how the money was used. Opinion No. 90-584 followed the reasoning of Opinion No. 80-1416 and correctly pointed out that "the legislature did not intend that the Clerk had to account to the court; they are only required by law to present a warrant." As a result, in Opinion No. 90-584, the Attorney General found it was permissible for the Clerk's expense allowance to be used for events not specifically related to his office, including community or church fund-raisers.

R.S. 13:1212.1 provides, in part, that "the Clerk of the Civil District Court for the Parish of Orleans, shall receive a sum not to exceed ten percent of his annual salary as an expense allowance." In Opinion No. 91-13, the Attorney General followed the reasoning of earlier Opinion Nos. 90-584 and 80-1416 and stated that the Clerk of the Civil District Court does not have to account for his expenses. The opinion concluded by stating that "the expense fund may be used for community fundraiser tickets as long as the total does not exceed 10% of the annual salary."

As a result of the foregoing, I respectfully disagree with the finding that I must account for the use of my expense allowance. However, if you strongly disagree with me on this point, please let me know and I will request an Attorney General's opinion to address this issue.

#### **6. Lease of Automobile**

In 1970, the Legislature passed R.S. 13:783(D) which authorized each clerk of the district courts "to purchase, out of any surplus in his salary fund, an automobile for the use of his office. . . ." Although I was aware that the law gave me the authority to purchase an automobile, I was unaware it prohibited me from entering into an automobile lease agreement.

In 1978, eight years after R.S. 13:783(D) became law, the Assessor Parish Clerk of Court wrote to the Attorney General asking for guidance in interpreting Act No. 511 of 1973 which prohibited the State and its political subdivisions from purchasing or leasing certain luxury automobiles. The Attorney General opined that because a clerk of court is not a political subdivision, the law did not apply to him. Because the Attorney General did not mention that clerks of court could not lease automobiles, I was of the impression that it was legal for me to do so. However, to avoid such questions in the future, I will obtain the Parish Council's permission, then purchase an automobile.

#### **7. Parishwide Mapping System**

Quite candidly, this finding is the most surprising.

In 1994, and before entering into the joint agreement with the Tangipahoa Parish Assessor, I requested an opinion from the Louisiana Attorney General concerning operating and computerizing a mapping department within my office. In response, the Attorney General issued Opinion No. 94-059 which found that "simple constitutional and statutory authority exist to enable joint participation by the Clerk and the Assessor in the GIS project."

As a result, I am puzzled by your conclusion and respectfully disagree with your finding that I did not have lawful authority to enter into an agreement with the Tangipahoa Parish Assessor. However, in the event you feel that I have encroached my boundaries, I will make a request to the Tangipahoa Parish Council for them to assume responsibility for the project.

#### **8. Professional Service Contracts**

In Opinion No. 78-128, the Attorney General opined that "The Clerk of Court is not a political subdivision of the state but is a public official." As a result, it is my understanding that Clerks of Court are not bound by laws affecting political subdivisions unless the law specifically includes

Mr. Daniel G. Kyle, CPA, CFU  
February 19, 2002  
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Clerks of Court in the definition of political subdivisions. See, for example, R.S. 42:62(9), which provides "for the purposes of this Part, . . . clerks of court . . . shall be separate political subdivisions."

In this case, R.S. 38:2235(A) does not have such an expanded definition of political subdivision. Rather, R.S. 38:2235 limits application of the "Political Subdivisions Telecommunications Procurement Law" to "any political subdivision of the state as defined in Article VI, Section 44 of the Constitution of Louisiana." La. Const. Art. VI, §44 defines "political subdivision" as "a parish, municipality, and any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions."

Because a Clerk of Court is a public official and not a "unit of local government," the Political Subdivisions Telecommunications Procurement Law does not apply to me. In any event, I believe the request for proposals or bid process makes sense and will voluntarily use it the next time my office obtains significant computer services.

#### 9. **Internal Controls**

I appreciate you pointing out how my office can improve its internal controls over disbursements. Following your recommendations, I am in the process of implementing a system of checks and balances that will improve our internal controls over disbursements.

#### 10. **Cell Phones**

Again, I appreciate you pointing out how my office can improve itself. Although I believe the office's cell phone usage is very reasonable, I am interested in adopting a formal policy. If possible, please forward a copy of your policy to me so that I may use it as a model.

In conclusion, thank you again for your professionalism in conducting my audit. Please feel free to call me at (855) 748-4146 if you have any questions or need additional information.

Sincerely,

  
**ARTHUR DANNER**  
Clerk of Court